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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1988

DISTRICT OF COLUMBIA,
Petitioner,
v.
DONALD R. PARKER, *et ux.*,
Respondents.

Brief *Amicus Curiae* In Support Of Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

AMICI
Five Concerned Washington, D.C. Criminal Justice Scholars

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INTERESTS OF AMICI CURIAE

The Five Concerned Washington, D.C., Criminal Justice Scholars include:

David E. Aaronson, J.D., Ph.D., is a professor in the Washington College of Law and in the Department of Justice, Law and Society of the American University of Washington, D.C. Professor Aaronson has published extensively in the areas of police discretion and public policy. Professor Aaronson is widely known in the academic and law enforcement communities as an advocate of police restraint.

Richard R. Bennett, Ph.D., is a professor in the Department of Justice, Law and Society of The American University, Washington, D.C. Professor Bennett, a former law enforcement officer, has conducted and published extensive research on police training and is widely known in the academic and law enforcement communities as an advocate of police restraint.

Gerald Caplan, J.D., is a professor in the National Law Center of George Washington University, Washington, D.C. Professor Caplan is a former General Counsel of the Metropolitan Police Department of Washington, D.C, former director of the National Institute of Justice, and was director of the Philadelphia Task Force. Professor Caplan is widely known in the academic and the law enforcement communities as an advocate of police restraint.

James J. Fyfe, Ph.D., is professor and chair of the Department of Justice, Law and Society of The American University, Washington D.C. Professor Fyfe, a former police officer, has conducted and published extensive research on violence between police and citizens and

police use of deadly force. Professor Fyfe drafted the Police Foundation *amici* brief in *Tennessee v. Garner,* 471 U.S. 1 (1985). Fyfe is a commissioner of the Commission on Accreditation for Law Enforcement Agencies and is widely known in the academic and law enforcement communities as an advocate of police restraint.

Arnold S. Trebach, J.D., Ph.D., is a professor in the Department of Justice, Law and Society of the American University, director of the Drug Policy Foundation, Washington, D.C. Professor Trebach is a former attorney with the United States Civil Rights Commission, and is widely known in the academic and law enforcement communities as an advocate of police restraint.

The *Amici* respectfully offer this brief in support of the petitioner. This petition raises issues of considerable public importance, the resolution of which will directly affect the safety of law enforcement officers and citizens throughout the country. In addition, there is a significant public interest in protecting public officials and law enforcement officers from unwarranted monetary liability under 42 U.S.C. § 1983.

SUMMARY OF ARGUMENT

After extensive research and consideration, *amici* have concluded that the standards for police use of deadly force advocated by Respondents and approved by the United States Court of Appeals for the District of Columbia Circuit are inconsistent with the fundamental police responsibility to protect life. Unless reversed by this Court, these standards will unnecessarily and unreasonably endanger citizens and police officers; dissuade police officers from being *appropriately* aggressive in their efforts to prevent and detect crime; and place unworkable burdens on police administrators.

ARGUMENT

Amici believe that all police experience and all available evidence indicate that the public's interest in the safety of citizens and police officers, and in effective law enforcement is damaged by the decision of the Court of Appeals.

I. THERE IS IN THE UNITED STATES NO GENERALLY ACCEPTED POLICE CUSTOM, PRACTICE, OR POLICY THAT REQUIRES POLICE OFFICERS TO REFRAIN FROM USING DEADLY FORCE UNTIL THEY ACTUALLY SEE WEAPONS IN THE HANDS OF ADVERSARIES.

Through long and painful experience and through extensive study, *amici* know well the dangers that confront police officers, and the difficulty of balancing citizens' safety and dignity with officers' need to protect the public and themselves. *Amici* know also that the great variability of potentially violent circumstances confronted by police officers in the field makes it impossible to prescribe detailed instructions by which officers might resolve every situation they encounter. Instead of undertaking the fruitless process of attempting to devise hard-and-fast rules for all situations, reasonable and competent police administrators throughout the United States have attempted to provide officers with general guidelines and strategies, and to train officers to adapt and apply these to a variety of fast-breaking situations. Through training and policy, reasonable and competent police administrators throughout the United States attempt to limit officers' discretion, but they recognize that it is not possible to eliminate such

discretion, and that it is far more practical to channel officers' discretion in directions that are consistent with fundamental police goals and responsibilities.

As reasonable and competent police administrators recognize, the primary police goal and responsibility is the protection of life. This responsibility applies to the lives of innocent citizens, suspects, potential adversaries, and police officers. As reasonable and competent police administrators also recognize, therefore, the acid test of whether police officers have appropriately exercised their discretion involves no artificial bright-line criteria, but involves instead the questions of whether officers have acted in an objectively reasonable manner that was consistent with their primary responsibility to protect life. Indeed, this test was the very reason for the law enforcement community's *amici* brief in *Garner*. In that case, as reasonable and competent police administrators recognized, state laws and administrative policies authorized a police officer to act in a manner inconsistent with his primary responsibility to protect life by shooting Edward Eugene Garner.

If the Court of Appeals' ruling in this case is followed elsewhere, police administrators will be required to promulgate policies and rules that will require officers to act in ways inconsistent with their responsibility to protect their own lives and the lives of innocent citizens. The ultimate consequence of such policies and rules will be unnecessary bloodshed and a reduction in the law enforcement effectiveness of the police.

When police are required to actually see weapons before resorting to deadly force, they will be proscribed from shooting at kidnappers who hold innocent citizens

at the points of announced, but unseen, guns. They will be required to refrain from shooting until bank robbers and airline hijackers who claim that their suitcases contain bombs actually prove their claims.

Under this standard, the police shooting of the man who, several years ago, held much of this Nation's capital hostage by threatening to blow up the Washington Monument with a truckload of explosives would be unjustifiable on grounds that the officer who eventually killed him had not actually seen a weapon. When police are required to actually see weapons in adversaries' hands before firing, many will die because their sightings will have come too late to allow for defensive responses: by the time a police officer sees a weapon in the hand of an adversary, the officer is literally only an instant from imminent death or grievous injury.

When police are required to refrain from shooting until they actually see weapons in adversaries' hands, they will also refrain from acting appropriately in circumstances in which they are likely to encounter armed suspects. This bright-line requirement that police officers actually see weapons in the hands of adversaries before resorting to deadly force is foolhardy and unprecedented. The historic test of the justifiability of officers' use of deadly force in defense of life is whether officers held objectively reasonable fear for their lives or for the lives of third parties when they fired their weapons. As illustrated above, such fear frequently exists even though officers do not actually see weapons. Unless this Court formally acknowledges that this fear may exist even though officers do not actually see weapons, police officers, citizens, and law enforcement effectiveness will suffer, and violent criminals will be instructed that they

may immunize themselves from defensive use of police deadly force by concealing their guns in their pockets or in paper bags.

II. THERE IS IN THE UNITED STATES NO GENERALLY ACCEPTED POLICE CUSTOM, PRACTICE, OR POLICY THAT REQUIRES POLICE OFFICERS TO ATTEMPT TO DISARM VIOLENT CRIME SUSPECTS THROUGH THE USE OF PHYSICAL FORCE.

The core of the police role, Professor Egon Bittner has observed in a classic work on the police, is a monopoly on the legitimate use of coercive force. E. Bittner, *The Functions of the Police in Modern Society* (1970). When they are on our streets, police officers represent society and its interests and, in practice, their monopoly on legitimate use of force dictates that police officers have an obligation not to lose encounters with potential adversaries. This obligation, as *amici* well recognize, must be exercised humanely and with great restraint.

This obligation not to lose is also the reason that police are authorized to escalate the force they employ to defend themselves or others to whatever degree is reasonably necessary. Despite extensive study and experience, *amici* are aware of no American jurisdiction in which police officers are required or expected to use unarmed defensive measures or martial arts techniques to overcome and disarm adversaries reasonably believed to be armed, dangerous, and to present imminent threats of death or grievous physical injury to officers or other persons. These are the circumstances that prevailed in this case, when Officer Hayes shot Donald R. Parker:

Parker, the subject of an arrest warrant for armed robbery, had fled the police, reasonably appeared to be forcibly kidnapping an innocent woman, had ignored Officer Hayes's commands to freeze, had overcome Officer Hayes's efforts to subdue him, and was reaching for his waistband at the time he was shot by Officer Hayes. *Amici* can conceive of no American jurisdiction in which Hayes would have been required to attempt to disarm Parker by engaging in hand-to-hand combat.

This is so because, regardless of the physical condition or training of any police officer, such a determination would place upon police officers the impossible burden of being capable of physically overpowering and disarming anybody they might happen to encounter in the course of their duties. No degree of training or physical fitness conditioning can ensure such an outcome, and no reasonable and competent American police administrator expects his or her officers to be martial arts experts capable of disarming anybody on the street without sometimes being compelled to resort to deadly force. If this were not the case, American police officers would have little need for firearms.

CONCLUSION

The standards for use of deadly force ratified by the Court of Appeals in this matter have nothing to do with the reality of policing in the United States. Unless they are overturned by this Court, the ability of the police to protect the lives and dignity of citizens, suspects, and themselves, and to prevent and detect crime will be greatly diminished.

Respectfully submitted,

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